

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOHN GEORGALLAS BANANA DISTRIBUTORS
OF NEW YORK, INC. d/b/a BANANA
DISTRIBUTORS,

Plaintiff,

— against —

N&S TROPICAL PRODUCE, INC. and
KOOK JIN NAM,

Defendants.

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TOWNES, United States District Judge:

MEMORANDUM and ORDER
GRANTING DEFAULT
JUDGMENT

07 CV 5093 (SLT)(RER)

On December 7, 2007, plaintiff John Georgallas Banana Distributors of New York, Inc. d/b/a Banana Distributors commenced this action against defendants N&S Tropical Produce, Inc. and Kook Jin Nam pursuant to the Perishable Agricultural Commodities Act of 1930 (“PACA”), 7 U.S.C. § 499a, *et seq.* The complaint alleges that defendants failed to pay for produce sold and delivered to defendants, and seeks to recover the amount of the unpaid invoices, prejudgment interest, and attorneys’ fees and costs.

Upon plaintiff’s motion, on April 15, 2008, the Clerk of Court properly noted the default of defendants pursuant to Fed. R. Civ. P. 55(a). On April 21, 2008, plaintiff moved for a default judgment, and this Court referred the motion to Magistrate Judge Ramon E. Reyes, Jr. for a Report and Recommendation.

Now before this Court is the Report and Recommendation of Judge Reyes dated June 18, 2008 (the “R&R”), in which he recommends that this Court grant plaintiff’s motion and award it \$61,610.50 in unpaid invoices, \$8,902.86 in interest, and \$350.00 in costs, totaling \$70,863.36. The R&R instructs the parties that they should file their objections, if any, to the R&R within ten

(10) days of receiving it. To date, the Court has not received any objections. For the reasons set forth below, the R&R is adopted in its entirety, and judgment shall be entered against defendants in the amount of \$70,863.36, as delineated in the R&R. In addition, plaintiff's motion for attorneys' fees is denied without prejudice for a future showing of fees incurred.

DISCUSSION

Under 28 U.S.C. § 636(b)(1), if any party serves and files written objections to a magistrate judge's recommendations within ten days of being served with a copy thereof, a district court must "make a de novo determination of those portions of the report or . . . recommendations to which objection is made." 28 U.S.C. § 636(b)(1) (2007). Upon de novo review, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* However, a court is not required to review the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985). Nonetheless, when no objections are filed, many courts seek to satisfy themselves "that there is no clear error on the face of the record in order to accept the [magistrate judge's] recommendation." Fed. R. Civ. P. 72(b) advisory committee note (1983 Addition); *accord Edwards v. Town of Huntington*, No. 05-CV-339, 2007 WL 2027913, at *2 (E.D.N.Y. July 11, 2007); *cf. Lewis v. Berg*, No. 00-CV-1433, 2006 WL 1064174, at *2 n.8 (N.D.N.Y. Apr. 20, 2006).

Here, neither party has filed any objections to the R&R although they were expressly advised to do so within ten (10) days of receiving the R&R. This Court, therefore, need not review Judge Reyes factual or legal conclusions, but has nonetheless reviewed the R&R for clear

error on the face of the record. Having reviewed the record, this Court finds no clear error. Accordingly, the R&R is adopted in its entirety, and plaintiff is granted judgment against defendants, jointly and severally, in the amount of \$61,610.50 for unpaid invoices, \$8,902.86 for prejudgment interest, and \$350.00 for costs. In addition, plaintiff's motion for attorneys' fees is denied without prejudice.

CONCLUSION

Magistrate Judge Reyes' Report and Recommendation, dated June 18, 2008, is hereby adopted in its entirety. The Clerk of Court is directed to enter judgment against defendants, jointly and severally, and in favor of plaintiff in the amount of \$61,610.50 for unpaid invoices, \$8,902.86 for prejudgment interest, and \$350.00 for costs. In addition, plaintiff's motion for attorneys' fees is denied without prejudice.

SO ORDERED.

Dated: Brooklyn, New York
July 15, 2008

Sandra L. Townes

SANDRA L. TOWNES
United States District Judge